

MULTIMEDIA



UNIVERSITY

STUDENT ID NO

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# MULTIMEDIA UNIVERSITY

## FINAL EXAMINATION

TRIMESTER 1, 2021/2022 SESSION

### UCV4612 – CIVIL PROCEDURE I

(All Sections / Groups)

29 NOVEMBER 2021

Reading Time: 2:45pm-3:00pm

(15 Minutes)

Answering Time: 3:00pm-6:00pm

(3 Hours)

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#### INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes **ONLY** in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.
2. This Question paper consists of 5 pages with 5 Questions only.
3. This paper consists of two parts. **PART A** is **COMPULSORY**. **PART B** to attempt **either question 4A or 4B**. The distribution of the marks for each question is given.
4. Students are only allowed to bring in **CLEAN AND ORIGINAL COPY** of Rules of Court 2012 into the exam venue. "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.
5. Please write all your answers in the Answer Booklet provided.

**PART A: COMPULSORY****QUESTION 1**

- (a) Kawan Ku Sdn. Bhd. (KKSB) was, and still is, the registered proprietor of all that piece of land situated at Bukit Katil, Melaka (the Land). KKSB had already obtained approval for the development of the Land, which was converted in category of land use from “Agriculture” to “Building (Apartment)” at a premium of RM81,450 per hectare. By an agreement dated 28.5.2013 (M&E Contract) between KKSB and Beruang Indah Sdn. Bhd. (BISB), BISB agreed to provide mechanical and electrical engineering services to KKSB and in return, KKSB agreed to deposit its share certificates to BISB as payment security.

By an Agreement dated 19.10.2014 (Joint Development Agreement) made between KKSB and Boss U Sdn. Bhd. (BUSB), KKSB agreed to deliver vacant possession of the Land to BUSB for the development of the Land and BUSB agreed to develop the Land into a high-rise residential project.

On 27.9.2015, the Building Plan approval was obtained from the local authority through BUSB’s efforts. As no actual development work had commenced at the Land, an extension for Building Plan approval was applied for and, on 26.11.2016, the extension approval was obtained.

On 26.01.2017, BUSB obtained its approval for the Developer’s Licence and permit to sell. This permit to sell was for 1 year only. Before the actual issuance of Developer’s Licence, BUSB had to deposit RM200,000.00. KKSB defaulted in payment obligation under the M&E Contract. Accordingly, BISB exercised its rights to take over and become the shareholder of KKSB in 2019. No physical work was ever carried out by or on behalf of BUSB on the Land since the date of the Joint Development Agreement dated 19.10.2014.

Based on the above facts, examine if BUSB may commence an action against KKSB and BISB.

(13 marks)

- (b) “It was further submitted by the plaintiff that there is a need to preserve flexibility and to adopt a liberal attitude towards the co-existence of judicial review proceedings and actions for a declaration with regard to public law issues. Unless the procedure adopted is ill suited to dispose of the question at issue, there is much to be said in favour of the proposition that a court having jurisdiction ought to let a case be heard rather than entertain a debate concerning the form of the proceedings.”

Elucidate the statement above.

(12 marks)

(Total: 25 marks)

**Continued...**

**QUESTION 2**

- (a) On 13.7.2015, a group of residents were at the basketball court from 6.30 am to 7.30 am to attend a group exercise in Segamat. During the said gathering, there were clapping of hands and cheering by the attendees. Lone Ranger (LR) was unhappy with the noises from the gathering. So, he went over and gave a piece of his mind. He requested the attendees to disperse but was ignored by the attendees. Infuriated by the refusal to disperse, LR lodged a police report. When the incident repeated over a period of time, the much angered LR lodged several complaints to the Segamat Municipal Council (SMC) and the Segamat Police Station (SPS). LR took the matter further by taking photographs and video recordings of the subsequent gatherings at the basketball court and sent the photographs he took to the SMC and SPS.

On 17.8.2015 Hulk Lee (HL), who was one the residents captured in the photographs and video recordings, sent a letter to the employer of LR (an education institution) in Segamat. Among others, the letter stated that LR had been harassing a group of ladies exercising in the mornings between 7.00 am to 7.45 am on a basketball court opposite his house by videotaping and recording their movements while they exercised. Based on this letter, a disciplinary proceeding was conducted against LR which made a finding that LR was guilty as complained and as a result, LR was dismissed from his position as a staff of the education institution on 23.11.2016. LR was aggrieved by the complaint and the dismissal by his employer. LR then filed a defamation suit against HL at the Sessions Court at Muar.

HL then made an application vide a Notice of Application to the Sessions Court at Muar for the defamation suit to be transferred to the Sessions Court at Segamat.

Determine whether the application may be allowed.

(13 marks)

- (b) The Plaintiff filed a Writ and Statement of Claim against the First and Second Defendants on 11 August 2016 in the High Court. Upon extraction, the Plaintiff by its solicitor attempted to serve the Writ and Statement of Claim separately on the Defendants by AR registered post on 22 August 2016. Following the service on the Defendants, the Plaintiff's solicitor affirmed an affidavit of service stating that he had posted the Writ and Statement of Claim by AR registered post to the Defendants' last known addresses. But he did not exhibit the AR cards, nor did he inform the court whether the AR cards were returned or otherwise. He merely exhibited proof of posting by indorsing the day and date of service on the flip side of the Writ.

Determine whether the Plaintiff has proved service of the Writ and Statement of Claim.

(12 marks)

(Total: 25 marks)

**Continued...**

**QUESTION 3**

- (a) The Plaintiff filed an action against the Defendant for breach of payment terms in a joint-development agreement ("the Agreement") dated 7 November 2016 (exhibited as ZRT-1 of the affidavit of service dated 17 March 2020), entered into between the parties. The Writ of Summons and Statement of Claim were served on 3 March 2020 at the Defendant's registered addresses. Proof of posting thereto, had been exhibited as ZRT-2 of the said affidavit of service. The Defendant failed to enter appearance, and pursuant thereto, JID was entered against it, and served on 17 April 2020, also at the Defendant's registered addresses. The Defendant then filed an application to set aside the JID on 28 August 2020 on the grounds that the JID was irregular. The Defendant contended that the service was accepted by a third party but never denied its registered address. The Defendant had further contended that failure to comply with rule 56 of the Legal Profession (Practice and Etiquette) Rules 1978 ("Practice and Etiquette Rules") had also rendered the JID irregular.

Based on the above:-

- (i) Briefly explain the procedure to enter a judgment in default. (3 marks)
- (ii) Evaluate on the Defendant's application as to whether the JID obtained by plaintiff was regular; (15 marks)
- (b) The plaintiff had initially obtained judgment in default of appearance for injunction against the defendant in a suit for defamation. The defendant then filed a notice of application to set aside the judgment in default, and contended that he had never received any court documents from the plaintiff who allegedly had personally served the writ and statement of claim to the defendant. The application was dismissed by the court, the defendant appeal. In the appeal the plaintiff/respondent contested that there was a delay in the application to set aside at the first instance.

Based on the following facts, analyse the judgment in default of appearance entered by Plaintiff.

(7 marks)

(Total: 25 marks)

**Continued...**

**PART B: ANSWER EITHER QUESTION 4A OR QUESTION 4B****QUESTION 4A**

At the request of the defendant, the plaintiff granted financing facilities. The defendant defaulted in payment and the plaintiff commenced the present action demanding from the defendant, payment of the outstanding amounts. The plaintiff then filed the present application for summary judgment of its claim. During the hearing application, defendant contended that there was undue delay in filing the application. The plaintiff claimed that the application was filed after the appearance entered by the defendant. Hence, the plaintiff claimed that there was no inordinate delay on the part of the plaintiff in filing the application.

Based on the facts above, as the defendant's counsel:-

- (i) Consider whether defendant's contention can be successful;  
(5 marks)
- (ii) Explain the effect if the defendant raise a counterclaim;  
(5 marks)
- (iii) Explain to the defendant whether he may raise any issue to defeat the application;  
(7 marks)
- (iv) Explain the court's duty when deciding an application for summary judgment.  
(8 marks)

(Total: 25 marks)

**Continued...**

**QUESTION 4B**

- (a) Plaintiff is the rightful registered owner of a land title under PN 412364-413424, Lot 532783-533331 Mukim Hulu Kinta, Daerah Kinta, Negeri Perak. The Plaintiff subsequently found that the Defendant had encroached upon, used and operated the said lands illegally and without any tenancy, license, permission or consent from the Plaintiff, either express or implied. Thus, the Plaintiff allege that the Defendant have obtained ‘unjust enrichment’ as a result from the actions. Accordingly, the Plaintiff has issued a “Notice to vacate” on 08.09.2018 to the Defendant. The Plaintiff then continued to file in an Originating Summons and also an application for summary proceedings for possession of land against the defendant.

Based on the above, explain the followings:-

- (i) What is the application filed by the plaintiff about; (5 marks)
  - (ii) The procedure in order to file the application; (5 marks)
  - (iii) The principle that should be applied during the hearing of the application. (8 marks)
- (b) “In a nutshell, the order enables the court to determine any question of law or construction of document where it appears to the court that such question is suitable for determination without the full trial of the action and such determination will finally determine the entire cause or matter or any claim or issue therein. The order is new to our civil procedure and hence, the few local decisions of the High Court on the ambit of O 14A are not instructive”.

per Mohd Noor Ahmad in *Petroleum Nasional Bhd v Kerajaan Negeri Terengganu* [2004] 1 MLJ 8.

Based on the above statement, evaluate them with principles from case law.

(7 marks)

(Total: 25 marks)

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